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And MARK DYNE

FILED

MAR 06 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE

EUROPLAY CAPITAL ADVISORS,
LLC, a Delaware limited liability
company; MARK DYNE, an individual,

Plaintiffs

v.

DOES 1 through 10, inclusive

Defendants

Case No.

Central District of California Case No.:
2:17-cv-02856-CAS-ASx

SVK

**PLAINTIFFS EUROPLAY
CAPITAL ADVISORS, LLC AND
MARK DYNE'S APPLICATION
FOR AN ORDER TO SHOW
CAUSE AND FOR AN ORDER
COMPELLING GOOGLE, LLC'S
COMPLIANCE WITH SUBPOENA**

APPLICATION FOR ORDER TO SHOW CAUSE AND FOR ORDER COMPELLING
GOOGLE, LLC TO COMPLY WITH SUBPOENA

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FAXED

1 Plaintiffs Europlay Capital Advisors, LLC (“ECA”) and Mark Dyne (“Dyne”)
2 (collectively, “Plaintiffs”) respectfully submit this Application for an Order to Show
3 Cause and for an Order Requiring Compliance with a Subpoena (“Application”)
4 together with the supporting Memorandum of Law and Declarations of James A.
5 Sedivy (“Sedivy Decl.”) and Nicholas Poore (“Poore Declaration”) based on the
6 following:

7 1. Google, LLC (“Google”) has refused to fully comply with a subpoena
8 seeking the production of certain documents that was issued in the case of Europlay
9 Capital Advisors, LLC and Mark Dyne v. Does 1 through 10, filed in the Central
10 District of California, Case No. 2:17-cv-02856-CAS-ASx (the “Central District
11 Action”).

12 2. On April 19, 2017, Plaintiffs filed an unopposed ex parte application to
13 conduct expedited discovery (the “Application”) from (i) Microsoft Corporation
14 (“Microsoft”) regarding the Microsoft email address,
15 “rdorsey.wsandco@outlook.com” (the “Subject Outlook Account”); and (ii) Google,
16 regarding the Google email address, “alain.quaireau.kiade@gmail.com” (the
17 “Subject Gmail Account”). (Sedivy Decl. ¶ 3; Exhibit 1.)

18 3. On April 26, 2017, the court in the Central District Action granted
19 Plaintiffs’ application to conduct expedited discovery from Microsoft and Google.
20 (Sedivy Decl. ¶ 4.)

21 4. On April 28, 2017, Plaintiff served Google and Microsoft with
22 subpoenas requesting documents and information that will disclose the identities of
23 those who have illegally accessed Plaintiffs’ computers and the confidential
24 information contained therein and to stop Defendants’ use, disclosure and
25 misappropriation of Plaintiffs’ confidential information. (Sedivy Decl. ¶5; Exhibits
26 2, 3.)
27
28

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5. After initially refusing to produce any information Google eventually produced a list of 12 login/log out IP addresses during the period of February 16, 2017, to April 27, 2017. Using IP Location Finder, we have determined that eight of the IP addresses are located in Logos, Nigeria (7 login and 1 log out); three of the IP addresses are located in Nairobi, Kenya (all login) and one IP address is located in New York City (logout). (Sedivy Decl. ¶ 9; Exhibit 8.) Google also provided the email subscriber's name, Alain Quaireau Kiade, which Plaintiffs believe is an alias. A Google search of "Alain Quaireau Kiade" shows that Alain Quaireau is co-manager for Kiade Maquettes, a motor boat manufacturer located in France. (Sedivy Decl. ¶ 9; Exhibit 9.) Google also provided the non-content email header information of over 690 emails sent from mdyne@ecamail.com to the Subject Gmail Account from March 28, 2017, to April 6, 2017, a total of 9 days (the "Subject Emails"). The actual email message contained in all of the Subject Emails was not produced by Google. (Sedivy Decl. ¶ 9; Exhibit 4.)

Plaintiffs have requested that Google produce the email messages contained in the Subject Emails, but Google has refused to do so. Plaintiffs bring this Application to compel Google to produce those email messages. Counsel for Plaintiffs and counsel for Google have met and conferred on multiple occasions regarding Google's refusal to produce the email messages contained in the Subject Emails as required by N.D. Cal. Local Rule 37-1(a) and Fed. R. Civ. P. 37. (Sedivy Decl. ¶¶ 10-14; Exhibits 5-7.)

6. Plaintiffs brought a motion in the Central District Action to compel Google to produce the actual email message contained in all for the Subject Emails, which was denied without prejudice with the Court finding that the motion to compel should be brought in the Northern District of California, where Google is headquartered. (Sedivy Decl. ¶ 15; Exhibit 8.)

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7. Plaintiffs therefore submit this Application for an Order to Show Cause, in the form attached, requiring Google to show cause why it should not be ordered to produce the email messages contained in the Subject Emails.

8. Plaintiffs further request that, absent just cause for Google's failure to comply with the Subpoena, the Court enter an order requiring Google to comply with the Subpoena within fifteen (15) days.

9. This Court has jurisdiction over this matter and venue properly lies within the Northern District of California, pursuant to Fed. R. Civ. P. 45(g).

WHEREFORE, Plaintiffs respectfully request that the Court:

I.

Enter an Order to Show Cause, directing Google to show cause why this Court should not enter an Order directing Google to produce the email messages contained in the Subject Emails;

II.

Enter an Order requiring Google to comply fully with the Subpoena within fifteen (15) days;

III.

Order such other and further relief as may be necessary and appropriate to achieve compliance with the Subpoena within the time period set forth in the proposed Order to Show Cause.

DATED: March 6, 2018

Stubbs Alderton & Markiles, LLP

By: 

Jeffrey F. Gersh

James A. Sediyy

Attorneys for Plaintiffs

Europlay Capital Advisors, LLC, and
Mark Dyne

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 15260 Ventura Blvd., 20th Floor, Sherman Oaks, California 91403.

On March 6, 2018, I served the foregoing documents described as:
PLAINTIFFS EUROPLAY CAPITAL ADVISORS AND MARK DYNE'S APPLICATION FOR AN ORDER TO SHOW CAUSE AND FOR AN ORDER COMPELLING GOOGLE LLC's COMPLIANCE WITH SUBPOENA
 on all interested parties to this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

Julie Schwartz
 Christian Lee
 PERKINS COIE LLP
 3150 Porter Drive
 Palo Alto, CA 94304-1212
 Counsel for Non-party Google LLC
 jschwartz@perkinscoie.com
 clee@perkinscoie.com

☒ **BY E-MAIL:** I caused the above-referenced document to be transmitted via e-mail from hcory@stubbssalderton.com to jschwartz@perkinscoie.com

☒ **(BY MAIL)** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with STUBBS ALDERTON & MARKILES LLP practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sherman Oaks, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on March 6, 2018, at Sherman Oaks, California


 HEATHER CORY